IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

-

WRIT PETITION NO : 11055 of 2001

Between:

K.P.Venkata Lakshminarayana, S/o.Hanumantha Rao,

Aged 37 years, r/o. M M Puram, Bheemadole Mandal,

West Godavari District.

..... PETITIONER

AND

1.The District Collector, Krishna District,

Machilipatnam,

2.The Prohibition and Excise Superintendent,

Krishna District at Machilipatnam. **.....RESPONDENT**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate Writ or Writs, Order or Direction, declaring the action of the Respondents in not granting licence to the petitioner in Form IL 24 for the shop at Gannavaram in Krishna District, pursuant to the drawal of lots held on 4-6-2001, as illegal, arbitrary and without jurisdiction and to consequently direct the Respondents to grant licence to the petitioner for shop at Gannavaram in Krishna District, by holding that the second drawal of lots on 4-6-2001 is impermissible under law, apart from being illegal and arbitrary; Award costs and pass such other or further orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.K.RAGHUVEER REDDY

Counsel for the Respondents: G.P for Prohibition and Excise.

The Court made the following :

ORDER:

The petitioner seeks to issue a writ of Mandamus declaring the action of the respondents in not granting licence to the petitioner in Form IL 24 for the shop at Gannavaram in Krishna District pursuant to the drawal of lots held on 4-6-2001 as illegal, arbitrary and without jurisdiction and to consequently direct the respondents to grant licence to the petitioner for shop at Gannavaram in Krishna District by holding that the second drawal of lots on 4-6-2001 as impermissible under law.

The petitioner is one of the participants in the drawal of the lots for allotment of the shop at Gannavaram. Admittedly, the petitioner was not present on the date of drawal of the lots i.e., on 4-6-2001. According to him, he gave an authorization to his close friend L.N.V.Durga Prasad. In the presence of the said L.N.V.Durga Prasad, the respondent authorities conducted drawal of the lots during which the name of the petitioner was announced as one of the allottees. But in view of the authorization of L.N.V.Durga Prasad, the respondents refused to finalise the shop in favour of the petitioner and finalised the same in favour of some other applicant on the ground that any authorization must be given in the form of General Power of Attorney only. However, in view of the subsequent events and lapse of the Excise Act and also in view of the recent Excise Policy for the allotment of shops, the relief which is sought for in this writ petition does not survive for grant of licence.

It is the specific case of the petitioner that he wanted to participate in the drawal of the lots to be held on 04-06-2001 at Machilipatnam. When he has started from his native place-Machilipatnam, and reached to Hanuman Junction, which is about 65 km. from Machilipatnam, he suffered with severe chest pain. Therefore, immediately he rushed to Seetha Mahalakshmi Nursing Home where he was treated by
Dr. Ramachander Rao. Since on the advise of the doctor, he could not come to Machilipatnam to be present at the time of drawal of the lots he sent his close friend-LNV Durga Prasad giving authorization on a stamp paper worth Rs.10/- along with doctor certificate to participate in the drawl of lots, to be held as per schedule. It is stated that after showing the requisite authorization letter and doctor certificate, his friend-LNV Durga Prasad was permitted to participate in the auction and in the said drawal of lots, the name of the petitioner was announced. But the shop was not allotted in favour of the petitioner on the

ground that the authorization letter given by the petitioner is not a General power of attorney. It is further stated that there is no procedure prescribed in any of the Rules issued under A.P.Excise Act that the authorization must be given by way of General power of attorney alone. In the instructions issued by the 2nd respondent, it is categorically stated that the applicant or his attorney can be present at the time of selection. It is the case of the petitioner that under the circumstances once the nominee was present along with requisite authorization letter, hall ticket as well as doctor certificate, without assigning any reason not finalizing the drawal of lots in his favour and allotting the same to the third party is arbitrary and illegal. The grievance of the petitioner is that apart from not finalizing the drawl of lots in his favour, the respondents without there being any reason, forfeiting the 1/3rd deposit made by the petitioner is not just and reasonable.

Heard.

Learned counsel for the petitioner submitted that once the respondents declared that the petitioner is not entitled to get the licence, it is not just on the part of the respondents in refusing to refund the deposit amount for no fault of the petitioner. The respondents on the ground that authorization is not valid illegally refused the grant of licence in favour of the petitioner. As per the Rules made thereunder, in case if licence is refused, the fee paid shall be refunded. The learned counsel for the petitioner further drawn to my notice that the Government of Andhra Pradesh, Revenue (Excise III) Department in Memo No.32849/Ex.III(2)/2003-2 dated 03-09-2003 where the similarly situated successful applicant, who was not present at the time of LOT, refunded the deposit amount of Rs.1,00,000/- to him. Therefore, the case of the petitioner also falls under the same category.

I have perused the material available on record.

As seen from the memo referred by the learned counsel for the petitioner, it is true that the successful applicant who was not present at the time of LOT has got refund of amount deposited. For better appreciation, I may refer the said memo and it is thus:

> "…. In the circumstances reported by the Commissioner of Prohibition & Excise, Hyderabad in the reference 3rd cited, the Government after careful consideration of the matter hereby, decide to refund the amount of Rs.1.00 (Rupees one lakh only) in favour of Sri Suman Goud s/o Laxmi Narsa Goud, Vinayaknagar, Nizamabad as he was not present when LOTs were conducted 17-04-2002, on humanitarian grounds since the applicant could not attend due to Viral fever problem, and the same shop was allotted to

another person…”

In the instant case absolutely there is no dispute as regards the complaint of the petitioner that he has suffered with chest pain and deposit of 1/3rd of the licence fee. Therefore, it is clear that due to unavoidable circumstances only, the petitioner could not attend the place where the lots were allotted and authorized his close friend-LNV Durga Prasad to participate in the drawal of lots. It is further to be noted that no rule prohibiting the earnest money deposit if the licence is refused is brought to the notice of this court that the amount deposited by the petitioner shall not be refunded. Admittedly, in the above-cited memo, the Government granted permission on humalitarian grounds to refund the amount deposited by the successful applicant therein. Therefore, the facts mentioned in the said Memo are similar to the facts of the case on hand.

Having regard to the facts and circumstances of the case, I am of the considered view that the petitioner is entitled for refund of the deposit amount. Even assuming for a moment, by reason of refund of licence fee in favour of the petitioner, the Government will not suffer with any loss, in view of the fact that admittedly, the Government realized the entire licence fee in respect of the shop allotted to the 3rd party.

For the aforesaid reasons and in the light of the memo issued by the Government, in the interest of justice, it is just and reasonable if the respondents are directed to refund the licence fee deposited by the petitioner, which was equalent to 1/3rd of the licence fee, within a period of four weeks from the date of receipt of a copy of this order.

With the above directions, the writ petition is disposed of. No costs.

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09-03-2005

Mjl/*

Copy to:

1.The District Collector, Krishna District,

Machilipatnam,

2.The Prohibition and Excise Superintendent,

Krishna District at Machilipatnam.

3.Two CCs to the G.P. for Prohibition and Excise,

High Court Buildings, Hyderabad.(O.U.T.)

4.Two CD copies.